

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ANGELA STUDDARD, individually and as
lawful wife, next of kin, administrator ad
litem, and personal representative for
EDMOND STUDDARD, Deceased, and
Estate of Edmond Studdard,

Plaintiff,

V.

SHELBY COUNTY, TENNESSEE;
SHERIFF WILLIAM OLDHAM, in his
capacity as Sheriff of Shelby County,
Tennessee; SHELBY COUNTY SHERIFF'S
OFFICE; ERIN J. SHEPHERD, individually
and as employee or agent of Shelby County,
Tennessee; and TERRY I. REED, individually
and as employee or agent of Shelby County,
Tennessee.

Defendants.

Civil Action No.

2:17-cv-02517

Jury Demanded

**DEFENDANTS ERIN SHEPHERD AND TERRY REED'S COMBINED
MOTION AND SUPPORTING MEMORANDUM FOR STAY PENDING
RULING FROM THE SIXTH CIRCUIT**

Defendants Erin Shepherd and Terry Reed (hereinafter, “Defendants”) move the Court to stay this case pending the outcome of their interlocutory appeal to the Sixth Circuit. In support of this Motion, Defendants state as follows:

Memorandum of Facts and Law in Support of Motion

1. The Plaintiff filed her Complaint in the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis on July 7, 2017 against Shelby County,

Erin Shepherd, and Terry Reed, alleging the wrongful death of her husband. (ECF 1-1).

2. The civil action was removed to this Court on July 21, 2017. (ECF 1).

3. Defendants Reed and Shepherd filed a Motion for Summary Judgment on August 31, 2018, asserting in relevant part that they are entitled to qualified immunity. (ECF 89). Shelby County filed a separate Motion for Summary Judgment the same day. (ECF 90).

4. The Court granted Shelby County's Motion, but denied Defendants Reed and Shepherd's Motion on January 22, 2019. (ECF 153).

5. A jury trial in this case is currently set for March 11, 2019, with a pretrial conference set for March 1, 2019 and the joint pretrial order, proposed verdict form, proposed jury instructions, proposed voir dire questions, and motions in limine due to the Court by February 20, 2019. (ECF 128).

6. The parties each have multiple witnesses, including two out-of-state expert witnesses, who are expected to be called to the stand in the event of trial.

7. On January 25, 2019, Defendants Reed and Shepherd filed a Notice of Appeal to the Sixth Circuit Court of Appeals, where they intend to assert qualified immunity.

8. Qualified immunity is not only immunity from liability but also immunity from suit. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). The immunity is "effectively lost" if a case goes to trial. *Id.* Thus, an order denying qualified immunity is

immediately appealable; otherwise, it would be “effectively unreviewable.” *Id.* at 527.

9. It is unknown at this time what the Sixth Circuit’s briefing schedule (and potentially oral argument schedule) of this appeal may be. However, it is highly unlikely that the appeal will be adjudicated prior to the current March 11, 2019 trial setting.

10. Therefore, Defendants request that the Court enter an order staying all proceedings in this case, cancelling the pending trial date, and cancelling all related scheduling deadlines.

Respectfully submitted,

/s/ E. Lee Whitwell

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Attorneys for Defendants

Certificate of Consultation

Undersigned counsel for Defendants Reed and Shepherd, pursuant to Local Rule 7.2(a)(1)(B), certifies as follows:

On January 23 and 24, 2019, I consulted via email with Plaintiff's counsel—Daniel Seward—regarding the Motion for Stay. Plaintiff's counsel advised that he does not consent to the relief sought.

/s/ E. Lee Whitwell

Certificate of Service

I certify that the foregoing is being filed via the Court's ECF system this 25th day of January, 2019, for service on all persons registered in connection with this case including:

Daniel A. Seward, Esq.
4510 Chickasaw Road
Memphis, TN 38117

Attorney for Plaintiff

/s/ E. Lee Whitwell